"On 26.12.66 at about 1.00 a.m. at No. 3654 Jalan To'Hakim at dispensary of Dr. Lye Tong Meng accused broke into the said dispensary by entering through a window of the second floor of the building. Dr. Lye who was awakened by the noise managed to catch the accused but accused struggled and escaped through the same window. Subsequently on 13.4.67 accused was arrested by the police (DPC 10444). No property was missing from the building. Dr. Lye made the report the same day of incident *vide* K. Bahru Report No. 2873/66."

The appellant admitted the truth of these facts, the plea of guilty was then accepted and he was convicted. Sentence was deferred at the request of the prosecuting officer "pending finger prints."

When the appellant appeared for sentence on 29th April, 1967, he had retained counsel who said that accused wished to withdraw his plea on the ground that he had not been identified by the complainant, Dr. Lye, as the person who had entered his dispensary. Counsel also added that the accused had been arrested somewhere else, and that unless he could be identified by Dr. Lye he should not have been convicted. He also pointed out that the appellant was unrepresented on the day his plea was recorded and had therefore no opportunity to obtain legal advice.

The learned magistrate declined to permit the appellant to withdraw his plea and after noting down his record of previous convictions, which the appellant admitted, sentenced him to three months imprisonment.

Mr. Wilson for the appellant referred to the case of *Public Prosecutor* v. *How Kim Kok* [1] to support the proposition that an unrepresented accused person who had earlier pleaded guilty should be allowed to withdraw such plea should he choose to do so later. However, the facts in that case are completely different from the present one. That decision depended on question of law and the interpretation of Sanitary Board by-laws, so that in exercising his discretion in allowing the accused to withdraw his plea, the magistrate was exercising it correctly. In the present appeal, all that the appellant had to consider before making his plea, was a simple question of fact, i.e., whether he had entered a particular dwelling house or not on the date and time mentioned in the charge.

In the next authority cited by counsel, *Public Prosecutor* v. *Yusoff*,[2] the appeal was allowed because the lower court, in that case, had convicted accused on what was in fact a qualified plea. Another case cited that of *Yeo Sim Huat* v. *Public Prosecutor*,[3] also concerns an unrepresented accused person whose qualified plea was wrongly treated as an unequivocal plea of guilty and therefore cannot apply to the facts of the present appeal.

It was held in *Abdul Mormin* v. *Public Prosecutor*[4] that until a court is *functus officio* it can in a proper case reject a plea of guilty which it may have accepted, and that it is within the discretion of the court whether or not to allow such a plea to be withdrawn, which discretion must be exercised judicially. I am inclined to the view that in this appeal, having recorded a conviction against the appellant, the learned magistrate was *functus officio* and cannot therefore permit the plea to be withdrawn.

In any case, even if he had not been *functus officio*, this discretion, to cite the words of Rigby J. in *Public Prosecutor* v. *Sam Kim Kai* [5] (and it should be noted that in his Lordship's view, this discretion exists *before* sentence), "requires to be exercised judicially and for valid reasons. An accused person cannot be permitted merely at whim to change his plea, except upon valid and sufficient grounds which satisfy the magistrate that it is proper in the interests of justice that he should be allowed to do so."

In this particular appeal, the charge of housebreaking by night is in no way difficult to understand. There can be no doubt whatsoever that the appellant understood the facts as stated before the learned magistrate on 15th April, 1967, and that he made an unequivocal plea of guilty. The fact that he was unrepresented by counsel, or that it was not stated in the statement of facts made by the prosecuting officer that the complainant could or could not identify the appellant cannot in my view detract from the validity of this plea.

The appeal is accordingly dismissed.

Appeal dismissed.

Solicitors: *Wilson & Co.*

ENG LYE HUP CO. LTD. v. CHUA SAI CHOO & ANOR.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Ambrose J.) February 16, 1968]

[Singapore — Federal Court Civil Appeal No. Y. 41 of 1967]

Master and Servant — Liability of master — Mason falling off a ladder — Work entailing climbing up and down ladders — Whether danger reasonably foreseeable.

The appellants were the employers of the deceased, on behalf of whose estate the respondents, as administratrix and co-administrator, claimed damages for the death of the deceased in an accident allegedly caused by the negligence of the appellants. The deceased was a mason, having been employed as such by the appellants for over two years. His work entailed climbing up and down ladders. The appellants were at all material times general contractors, and at the time of the accident were engaged in erecting and constucting an electricity sub-station at Toa Payoh. The deceased's duties included, *inter alia*, the erecting and constructing of brick walls of the electricity sub-station. On the day of the accident, as was his usual practice, the deceased was climbing down the ladder when he fell. The learned trial judge made no positive finding as to the cause of the deceased's fall from the ladder in question, nevertheless held that in the circumstances the possibility of the ladder slipping while in use was always present and it could have been

foreseen and that in the circumstances it was reasonably practical for the appellants, who could have foreseen the contingency of an accident by reason of the possibility of this ladder slipping while someone was using it, to provide a safer means of access to the roof of the sub-station by taking some action, the least of which was to detail a person to hold on to the bottom of the ladder to prevent it moving or slipping while any person went up or down the ladder.

Held, allowing the appeal: (1) the learned trial judge should have applied the test as laid down by Lord Normand in *Paris* v. *Stepney Borough Council* (1) or that test as explained in *Morris* v. *West Hartlepool Steam Navigation Co. Ltd.*(3);

(2) applying that test, the facts of the present case could not justify a finding that a precaution against the ladder slipping when in use was necessary where there was no evidence at all that it was one taken by other persons in like circumstances. Further taking into consideration the height the deceased had to climb, the free use he had of his hands and what a reasonable prudent person would do in the circumstances it was clear that if the ladder had slipped from its position causing the deceased to fall when ascending or descending the ladder, it could not be held in law that his employers were negligent.

Cases referred to:—

(1) *Paris* v. *Stepney Borough Council* [1951] 1 All E.R. 43 at p. 49.

(2) *Morton* v. *William Dixon, Ltd.* 1909 S.C. 807 at p. 809.

(3) *Morris* v. *West Hartlepool Steam Navigation Co. Ltd.* [1956] 1 All E.R. 385 at pp. 395 & 402.

FEDERAL COURT.

C. S. Wu for the appellants.

John Pillai for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The appellants are the employers of the deceased, on behalf of whose estate the respondents, as administratrix and co-administrator, commenced an action in the High Court of Singapore claiming damages for the death of the deceased in an accident allegedly caused by the negligence of the appellants.

The evidence, which was never in dispute, before the trial judge was very meagre indeed. The facts that appear from the evidence are these. The deceased was at the time of the accident employed by the appellants as a mason having been so employed for two or three years. The appellants were at all material times general contractors, and at the time of the accident engaged in erecting and constructing an electricity sub-station at Toa Payoh, Singapore. The deceased's duties included, *inter alia,* the erecting and constructing of brick walls of the electricity sub-station.

On the 29th December 1965 the deceased was working on the roof of the sub-station which was then under construction having been working on that roof for the past ten days. To gain access to the roof top he had first to get on to the roof of a building described as a battery room. The height of this building was 10 feet and the roof was a flat roof, the surface of which was tarred. The means of access used by the deceased from the ground to the flat roof of the battery room was a free-standing wooden ladder. From the roof of the battery room the deceased used a similar ladder to get on to the roof of the sub-station. The roof of the sub-station was nine feet above the roof of the battery room and the distance between the two buildings was five feet at ground level and merely two feet from roof-eave to roof-eave.

On the day in question, as was his usual practice, the deceased was climbing down the ladder leading from the roof of the sub-station to the roof of the battery room, on the first stage of his journey to the ground to have his midday meal, when he fell off this ladder through the space between the two buildings on to the concrete floor at ground level, a fall of about 15 feet having regard to the fact that the evidence is that he was less than half way down the ladder when he fell. Unfortunately the fall was a fatal one.

There was no eye witness who saw the actual fall but a witness, a fellow employee with the deceased, testified that he saw the deceased climbing down the ladder immediately before the fall. He had after seeing the deceased starting his descent down the ladder turned away towards the place where they were going to have their meal when he heard the noise of a person falling. He then rushed back and saw the deceased lying on the ground between the two buildings and he saw the ladder no longer there. The ladder was found lying flat on the roof of the battery room. This witness was working with the deceased on the site for more than a month before the accident and it was the deceased's usual practice while working on the roof of the sub-station to use this particular ladder as his means of access to that roof from the roof of the battery room. It was also the deceased's usual practice to get on to the roof of the sub-station empty handed and to come down empty handed and daily to come down to the ground at about 10 a.m. for a coffee break, at 12 noon for a lunch break and at 3 p.m. for another coffee break. The only other material facts are that the top portion of the ladder rested on the edge of the sub-station roof, the lower end of the ladder rested on the flat roof of the battery room and the ladder was not firmly lashed to any object or otherwise fixed firmly to prevent slipping or movement of any sort.

The respondents called no other evidence on the issue of negligence and, not surprisingly, the appellants elected to call no evidence at the close of the respondents' case and submitted that on the evidence the respondents had failed to prove that the death of the deceased was the result of any negligence on their part.

It would appear from his grounds of judgment that the trial judge made no positive finding

as to the cause of the deceased's fall from the ladder in question. In his judgment he stated:—

"From the facts it would appear that while the deceased was coming down the ladder in a normal manner either the ladder slipped from its position for one reason or other and thereby caused the deceased to fall to the ground or the deceased himself slipped on one of the rungs or missed his step and thereby caused the ladder to shift and both he and the ladder fell together. It may also well be that the deceased may have lost his grip on the ladder, and fell, and in so falling caused the ladder also to fall from its position."

The trial judge however held that in the circumstances the possibility of this ladder slipping while in use was always present and could have been foreseen and that in the circumstances it was reasonably practical for the appellants, who could have foreseen the contingency of an accident by reason of the possibility of this ladder slipping while someone was using it, to provide a safer means of access to the roof of the substation by taking some action, the least of which was to detail a person to hold on to the bottom of the ladder to prevent it moving or slipping while any person went up or down the ladder

The question is what is the law to be applied to the facts of this case and the findings of the trial judge. In *Paris* v. *Stepney Borough Council* [1] Lord Normand approved and applied the observations of Lord Dunedin in *Morton* v. *William Dixon, Ltd.*:—[2]

"Where the negligence of the employer consists of what I may call a fault of omission, I think it is absolutely necessary that the proof of that fault of omission should be one of two kinds, either — to show that the thing which he did not do was a thing which was commonly done by other persons in like circumstances, or — to show that it was a thing which was so obviously wanted that it would be folly in any one to neglect to provide it."

Lord Normand after quoting Lord Dunedin continued:—

"The rule is stated with all the Lord President's trenchant lucidity. It contains an emphatic warning against a facile finding that a precaution is necessary when there is no proof that it is one taken by other persons in like circumstances, but it does not detract from the test of the conduct and judgment of the reasonable and prudent man. If there is proof that a precaution is usually observed by other persons, a reasonable and prudent man will follow the usual practice in like circumstances. Failing such proof the test is whether the precaution is one which the reasonable and prudent man would think so obvious that it was folly to omit it."

Applying the test laid down by Lord Normand, can the facts of the present case justify a finding that a precaution against the ladder slipping when in use was necessary where there is no evidence at all that it is one taken by other persons in like circumstances? In my opinion clearly not.

Then, again applying the test laid down by Lord Normand, can the facts justify a finding that this precaution was one which the appellants, as reasonable and prudent employers, would think so obvious that it was folly to omit it or that it was unreasonable or imprudent to omit it (see the observations of Lord Porter and Lord Cohen in *Morris* v. *West Hartlepool Steam Navigation Co., Ltd.*[3] The trial judge stated the question to be simply whether the employers had provided the employee with a safe means of access to his place of work as is reasonably practical having regard to the particular circumstances of this case.

In my opinion the trial judge should have applied the test laid down by Lord Normand or this test as explained in the later case of *Morris* v. *West Hartlepool Steam Navigation Co. Ltd., supra.* Applying this test, can it be said that the respondents have established, for the burden of proof is on the respondents, that the appellants had omitted a precaution against this ladder slipping which they, as reasonable and prudent employers, would think so obvious that it was folly to omit it or should have thought so obvious that it was unreasonable or imprudent to omit it? The answer to this question is entirely a matter of evaluation to be placed on facts found by the trial judge and I have no doubt that this question must be answered against the respondents. It seems to me, taking into consideration the degree of risk of accident, the degree of injury likely to result from a fall, the height of the ladder, the nature of the work the employee was employed to do, the experience of the employee, the factors in the particular circumstances of this case are such that no reasonable and prudent employer would have thought it was so obvious to take a precaution against the ladder slipping that it was either folly to omit it or it was unreasonable or imprudent to omit it.

What are the facts? The deceased was a mason, having been employed as such by the appellants for over two years. His work entails climbing up and down ladders. The height he had to climb was of the region of nine feet. If he fell off the ladder he would fall at most nineteen and possibly nine feet. He had the free use of both hands. A reasonable or prudent employer could reasonably expect that the deceased, as any prudent person would do, before using the ladder would test it to find out if it was in a firm position. In my judgment, all these factors when taken into consideration point to only one conclusion namely, that if the ladder slipped from its position thereby causing the deceased to fall when ascending or descending the ladder, it could not be held in law that his employers were negligent.

In any event, on the evidence the trial judge was unable to determine whether the deceased's fall from the ladder was caused by the ladder slipping from its position because it had not been firmly secured. The trial judge, having found four possibilities in the passage of his judgment

which I have earlier set out, should, in my judgment, as a matter of law, have dismissed the action on the ground that the respondents had failed to prove, as they had alleged in their pleadings, that the ladder slipped while the deceased was descending it, thereby causing the deceased to fall. In other words the respondents had failed to prove that the deceased's death was attributable to the negligence of the appellants. In this connection it is pertinent to observe that at no stage of the proceedings did the respondents rely on the principle or rule of *res ipsa loquitur* and I do not therefore have to consider it.

For all these reasons I am impelled to the conclusion — though with regret — that the appeal must succeed with costs here and below.

Tan Ah Tah F.J. and **Ambrose J.** concurred.

Appeal allowed.

Solicitors: *Donaldson & Burkinshaw; Williams & Co.*

TAY SAI HIANG v. TAN EE KEOK

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Winslow J.) February 16, 1968]

[Singapore — Federal Court Civil Appeal No. Y. 50 of 1967]

Landlord and Tenant — Unlawful construction by tenant — Conviction of landlord for offence under Municipal Ordinance — Landlord applying for possession under Control of Rent Ordinance — Exposure to penalty, fine or forfeiture — Municipal Ordinance (S.S. Cap. 133), ss. 144(7)(10)(12) and 392 — Control of Rent Ordinance (Cap. 242), s. 15(1)(h).

This was an appeal by a landlord against the dismissal of her claim for the recovery of possession of a rent controlled premises. The respondent tenant had contravened section 144(7) of the Municipal Ordinance by knowingly reconstructing three water tanks on the premises without an approved plan. The appellant, as landlord, was convicted and fined for the offence. In an action for the recovery of possession of the premises under section 15(1)(h) of the Control of Rent Ordinance, the trial judge held that the appellant had not discharged the onus of proving that the breach of the Municipal Ordinance had exposed her to a fine. This was because she had failed to show that the complaint against her was made within the time specified in section 392 of the Municipal Ordinance.

Held: once the appellant had proved that she had been convicted of an offence, it must be assumed until the contrary was proved, that the appellant was exposed to a fine. The burden was therefore not on the appellant to prove that the complaint was made within the requisite period of twelve months, but on the respondent to prove that the complaint was not made within the requisite period of twelve months.

Cases referred to:—

(1) *Hooi Chuk Kwong* v. *Lim Saw Choo* [1958] M.L.J. 5.

(2) *Ho Tong Cheong & Ors.* v. *Oversea-Chinese Banking Corpn. Ltd.* [1967] 2 M.L.J. 70.

(3) *Sarah Cashin* v. *Goh Kah Seng* [1955] M.L.J. 52.

FEDERAL COURT.

C. S. Wu for the appellant.

J. F. McWilliam for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The appellant, the owner and the landlord of rent-controlled premises known as No. 720-E Upper Serangoon Road, Singapore, claimed possession of the premises from the respondent, the tenant of the premises. She claimed she was not precluded from recovering possession by virtue of *inter alia* section 15(1)(h) of the Control of Rent Ordinance (Cap. 242) on the ground that the respondent had knowingly committed a breach of section 144(7) of the Municipal Ordinance by constructing three brick water tanks on the premises without a plan and specification having been approved by the proper authority and that this breach had resulted in her being prosecuted, convicted and fined for an offence under section 144(10) of the Municipal Ordinance.

It is convenient at this stage to set out the material provisions of the Control of Rent Ordinance (Cap. 242) and the Municipal Ordinance.

Section 15(1)(h) of the Control of Rent Ordinance provides as follows:—

"15. (1) In the case of all premises such an order or judgment as is referred to in section 14 of this Ordinance may be made in any of the following cases, namely:—

(h) where the tenant or any other person occupying the premises under him has knowingly committed a breach of any written law regulating any business carried on upon the premises or of any provision of the Municipal Ordinance or of any rule or by-law made thereunder affecting the premises which exposes the landlord to any penalty, fine or forfeiture;".

The material provisions of section 144 of the Municipal Ordinance are as follows:—

"(7) No person shall commence any building operations involving the erection of a building . . . . unless —

x x x

(b) a plan and specification of the building have been approved by the Commissioners or the President within one year before the date of the notice."

"(10) Any person who —

(a) commences or resumes building operations in contravention of subsection (7);

shall be liable to a fine not exceeding three hundred dollars and to a daily fine of ten dollars for every day on which the offence is continued after conviction, and a Police Court may, on the application of the Commissioners, make a mandatory order requiring such person to alter in any way or demolish the building."

"(12) Where any building operations are commenced or carried out in respect of any building, they shall be deemed to have been commenced or carried out by the owner of the land whereon such building is erected and he shall be liable therefor."

It is also necessary to consider section 392 of the Municipal Ordinance which provides as follows:—